

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2471 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -

3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?

Versus

Appearance:

MR HK RATHOD for Respondent No. 1

ORAL JUDGEMENT

2. The respondent was on his duty as a Conductor on 4-5-1983 on route from Dhoraji to Jetpur. The bus was checked at Pedhla and the tickets were not issued to the passengers going from Gudala to Jetpur and from Manlikpur to Jetpur and the amount was not recovered from them such default was made and on that basis charge - sheet was issued and the workman gave reply stating therein that in fact there was no passenger without ticket in the bus.

Though the tickets were issued the same were torn. Cash of the workman was not checked and while he was checking the students pass at that time, checking party came and the statements of the passengers were not recorded in presence of the respondent. The passengers were not examined as per the demand of the respondent and therefore departmental inquiry is liable to be set aside and the findings are baseless and perverse. The Corporation has not produced any oral evidence but submitted the statement of defence vide exh. 5. and submitted that as it was found that the respondent has committed misconduct of dishonesty of serious nature as mentioned in the charge sheet. After service of the charge sheet on the respondent, he was informed to remain present in personal hearing. But he did not remain present. Therefore, ex-parte inquiry was conducted against him. The respondent was dismissed by the order dated 24-5-1984.

3 The Tribunal considered all the facts and circumstances of the case and the evidence on record. The Tribunal also considered the provisions of Section 11A of the Industrial Disputes Act regarding punishment. In the bus, 61 passengers were found at the time of inspection. Out of them 49 passengers were having tickets and 12 passengers were without tickets. The Tribunal also looked into the documents produced by the parties. The change table which was produced with the documents shows that Gudala is situated at stage - 6 whereas inspection took place at Pedhla which is situated at stage - 7 at the distance of one stage is 6 k.m. The tickets of four passengers going from Gudala to Jetpur at distance of 6 k.m. were not issued by the respondent and fare was also not collected. Mandlikpur from where a group of 8 passengers going to Jetpur came in the bus and that is situated at substage 6. In this manner when the passengers sat in the bus from Mandlikpur travelled upto 3 k.m. At that time inspection took place and the bus was checked. From these passengers of Mandlikpur the respondent had recovered fare but he had not issued the tickets and told the inspection party that he had tried to issue those tickets but they were torn. Considering the figure of the passengers in the bus then if a group of 8 passengers is getting in the bus and arranged till then 1 to 1-30 minutes may pass and speed of the bus normally was 1 k.m. per minute. In that manner, 1 to 1-30 minutes had passed. Meanwhile, the bus of the respondent was checked at a very short distance. That fact was not denied by the petitioner. The respondent had rendered service of 13 or 14 years, wherein about 17 defaults are recorded against the respondent and those

defaults were not in respect of recovering of fare.

4. Looking to the service of the respondent, figure of the passengers and checking done at a short distance etc. the Labour Court interfered in the quantum of punishment imposed by the Corporation. Considering seriousness of charges against the respondent and the conduct committed, the Tribunal directed the petitioner Corporation to reinstate the respondent at his original post with continuity of service for purpose except increments of interim period and without back wages for interim period within one month from the publication of the award.

5. Heard the learned advocate for the parties. Considering the jurisdiction of this Court under Article 227 of the Constitution of India I do not find any material regarding illegality and irregularities having committed by the Labour Court, Rajkot in reinstating the respondent. The respondent was dismissed on 24-5-1984 and he was reinstated by the order dated 12-12-1988 after more than four years. The Labour Court considered the punishment and thought it proper that the respondent is reinstated with continuity of service without payment of back wages and increment of interim period was sufficient as punishment for the respondent workman. In view of the service period of the respondent - workman and the figures of the passengers found without tickets and checking done at a short distance. I do not find any substantial ground to interfere with the award passed by the Labour Court. Therefore, this petition deserves to be dismissed. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs. Interim order, if any, stands vacated.

6. The respondent has also filed Civil Application No.3923 of 1998 for giving direction to the petitioner Corporation to pay revised pay on the basis of continuity of service and to fix salary of the respondent - workman as per the settlement dated 21-12-1989 and to grant regular increment as per S.R. 68 from 1989 to 1997 with the arrears of difference of pay from 1989 to 1997. As the petition of the petitioner has been dismissed, the petitioner is entitled for the pay in revised salary and regular increment after reinstatement. Therefore, the petitioner - Corporation is directed to pay the respondent - workman revised salary and regular increment in accordance with law, within months, from the date of production of a certified copy of this order.

